



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL-02-03-004	EFFECTIVE DATE: February 10, 2016
SUBJECT: Streamlined Investigation Pilot (S.I.P.)	
REGIONAL IDENTIFIER: Region I	

ABSTRACT

Purpose: The purpose of this notice is to establish a Region I pilot program to conduct an early analysis procedure on a certain population of cases in order to streamline operations and address the current backlog of cases and national performance goals.

Scope: This Notice applies to the Boston Regional Office, Whistleblower Protection Program.

References: OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual; Memo “Revised Whistleblower Disposition Procedures” dated April 18, 2012; and other applicable National and Regional Whistleblower Protection Program Regulations and Directives.

Cancellation: None

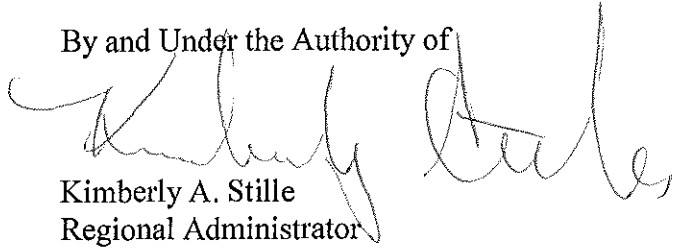
State Impact: None

Action Offices: Boston Regional Office, Office of Whistleblower Protection.

Originating Office: Boston Regional Office

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By and Under the Authority of

A handwritten signature in cursive script, appearing to read "Kimberly A. Stille". The signature is written in dark ink and is positioned above the printed name and title.

Kimberly A. Stille
Regional Administrator

Executive Summary

Region I's backlog of open investigations has been growing steadily. Our lapse times are increasing and the length of time it takes us to finish an average case is a disservice to the parties. We have to make a drastic change in the way we do business. We believe that there are steps we can take to reduce our backlog. The most critical need is an early analysis procedure, which is a drastic paradigm shift from the way we have conducted business in the past. What follows is an explanation of how we will make decisions on which cases to investigate.¹

Our present decision point as to whether to continue investigating a case:

Is it **possible** that further investigation would change the outcome of this case?

Our proposed decision point as to whether to continue investigating a case:

Is it **likely** that further investigation would change the outcome of this case?

At present, we operate under a system where if there is a chance (even a 5-10% chance) that further investigation will yield new information, which would change our analysis, we feel obligated to continue these investigations until all reasonable questions are answered. The effect is that in almost every case, we find that it is "possible" and we end up exerting much time and effort on apparently non-merit cases because of this possibility.

If we change the word "possible" to "likely" we are saying that there is a good chance (greater than 50%) that further investigation could change the outcome. This will result in a much smaller and more manageable population of cases that we will need to continue investigating after we receive initial information from the parties. Our experience has shown that by this point in the investigation, we have identified the merit cases or are still undecided (i.e., more investigation is needed). Therefore, the population of cases which proceed past this point is highly likely to contain all of our merit cases. We will conduct an early analysis and close any complaints where further investigation is not "likely" to change to outcome. This will enable us to devote our resources to the most important cases.

Upsides:

- Changing this one word, in practice, could have a dramatic affect over time on caseload.
- It would have little, if any effect, on the number of merit findings the region issues.

Downsides:

- There will be quality control in this system as all decisions on which cases to investigate further or dismiss will be made by the RSIs in conjunction with RSOL, as needed.

¹ There is no conflict between this new policy and the April 20, 2015 memorandum: "Clarification of the Investigative Standard for OSHA Whistleblower Investigations" since we will continue to apply that standard to cases we investigate and refer to RSOL.

Procedures

Before a case is analyzed, a complainant will have had two full opportunities to present his/her case to OSHA ("two bites at the apple"): (1) The initial complainant interview, and (2) a rebuttal interview after reviewing Respondent's position statement. After Complainant has had those two opportunities, we will review the elements of the alleged violation and determine if "it is likely that further investigation would change the outcome of this case." If the answer is "no" then the case will be closed and Complainant afforded appeal rights. Cases in which we believe further investigation is "likely" to result in a merit outcome will continue. If in doubt, we will continue the investigation and reassess the case periodically. There will be some cases, for example, that only require us to check one thing, or interview an additional witness to reach a conclusion. Other cases may require full investigations.

We will apply these early analysis procedures to our two populations of cases - incoming cases and existing cases. Both are discussed below.

Incoming cases:

1. Screening:
 - a. When a complaint looks like a prima facie allegation, the screener will conduct a full complaint interview.
 - b. Based on the interview, the screener will develop an information request for the Respondent and Complainant, if appropriate.
 - c. Cases which are docketed after the initial interview will be assigned to the screener.
2. The Investigator will obtain the following before implementing an early analysis:
 - a. Respondent's position statement and RFI (request for information) response.
 - b. Confirmation that Complainant received Respondent's position statement.
 - c. Complainant rebuttal interview or written response.
3. Based on the information obtained at this point, the Investigator along with input from the RSI, will analyze and determine if it is likely that further investigation would change the outcome of this case, either from merit to non-merit, or from non-merit to merit."
 - a. If "yes", the investigator will continue the investigation.
 - b. If "no", for a non-merit case, the case will be closed and Complainants afforded their appeal rights.
 - c. If unsure, the investigator will continue the investigation.
4. The above methodology should limit the number of new cases becoming part of the backlog and gradually decrease caseload.

Existing Cases:

Investigators will choose candidates among their assigned case load and do the following:

1. Organize the case file and prepare a list of exhibits. If case file is deemed an electronic case file (ECF), the investigator will organize the case as required on O drive case folder.
2. Write up an abbreviated ROI focusing on chronology and other important information to the extent possible with the information already in the file.
3. Investigator and RSI will discuss an analysis of the elements based on the two sides of the story and Complainant's two "bites at the apple."
4. If the RSI determines that the case can be closed based on the information obtained (i.e. further investigation is not likely to change the outcome), the RSI will consult with ARA.
 - a. If the RSI and ARA (when consulted) agree that further investigation is not likely to change the outcome, the case will be dismissed.
 - b. If the RSI and ARA determine that further investigation is needed, the investigator will be given instructions on the additional items needed. Investigations remanded at this phase should be limited, whenever possible, to the minimum necessary to answer the question: "Is it likely that further investigation would change the outcome of this case?"

The above methodology should decrease the number of cases assigned to investigators for full field investigation and gradually decrease caseload.

Measurement Metrics

Before and after the pilot begins, the Region will be able to track and compare the average number of cases closed per week and average age of open cases. The pilot should have a measurable effect on these metrics. The number of cases closed per week should increase and an average age of open cases should decrease. The baseline measurements will be included in the first pilot report and compared to the results as the pilot progresses. Additionally, a periodic poll of investigators' opinions and comments will be obtained to provide further qualitative assessment of this pilot.

Reporting

The Region I whistleblower program will submit a monthly progress report to the Regional Administrator. A final report submitted one year from the effective date will contain recommendations to continue, modify or discontinue the developed procedures.